

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MANUEL GARCIA,

Case No.: 2:17-cv-02504-APG-BNW

Plaintiff

## **Order Granting Defendants' Motion for Summary Judgment**

v.  
LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, et al.,

[ECF No. 90]

## Defendants

Plaintiff Manuel Garcia crashed his car while attempting to flee from defendant Officer on Prisbrey of the Las Vegas Metropolitan Police Department (LVMPD). Garcia was d in the crash and was brought to Sunrise Medical Hospital, where he was diagnosed with fracture. He was discharged from the hospital and taken into LVMPD's custody that same Garcia filed this suit against LVMPD, Sheriff Joseph Lombardo, Officer Brandon ey, John Doe,<sup>1</sup> and Susanne Rozendaal, D.O.<sup>2</sup>

Garcia’s claim against LVMPD, Sheriff Lombardo, and Officer Prisbrey (the LVMPD defendants) asserts deliberate indifference to his medical needs under 42 U.S.C. § 1983. Garcia asserts against Officer Prisbrey a claim for negligence and intentional infliction of emotional distress (IIED). Finally, he asserts against LVMPD and Sheriff Lombardo claims for municipal

<sup>1</sup> Garcia asserted a deliberate indifference claim against an unidentified NaphCare or Clark County Detention Center doctor who treated his injury while he was in the infirmary. ECF No. 44 at 3-5. NaphCare, Inc. was dismissed without prejudice in Magistrate Judge Peggy Leen's screening order on February 20, 2019. ECF No. 43. Garcia did not reassert a claim against NaphCare in his second amended complaint. ECF No. 44.

<sup>2</sup> I granted summary judgment for all claims against Dr. Rozendaal on February 18, 2021. ECF No. 105.

1 liability and the negligent hiring, training, and supervision of Officer Prisbrey, John Doe, and  
 2 Rozendaal. The LVMPD defendants move for summary judgment. LVMPD and Sheriff  
 3 Lombardo do not move on Garcia's negligent hiring, training, and supervision claim.<sup>3</sup> Garcia  
 4 did not oppose the motion.

5 I grant the motion on the deliberate indifference, negligence, and IIED claims because  
 6 Garcia has not pointed to evidence raising a genuine factual dispute on essential elements of  
 7 those claims. I cannot grant summary judgment on the state law negligent hiring, training, and  
 8 supervision claim because the defendants did not move on it. However, I understand why the  
 9 claim may have been overlooked, and it appears Garcia may have abandoned this case. I thus  
 10 will grant the LVMPD leave to file another motion for summary judgment on the remaining  
 11 claim.

12 **I. BACKGROUND**

13 On January 3, 2016, Officer Prisbrey tried to pull Garcia over after observing him driving  
 14 recklessly. ECF No. 90-1 at 2. Garcia sped away from by utilizing the left shoulder to pass other  
 15 vehicles on the I-15 northbound onramp from Spring Mountain Road. *Id.* Officer Prisbrey ended  
 16 his pursuit but informed the Nevada Highway Patrol (NHP) of Garcia's vehicle description and  
 17 approximate location. *Id.* NHP found Garcia's vehicle crashed into a boulder and was told by a  
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19 <sup>3</sup> The LVMPD defendants may have assumed that "Count IIII (sic)" was only about respondeat  
 20 superior liability. ECF No. 44 at 9; *see also* ECF No. 42 at 9 (Magistrate Judge Peggy Leen not  
 21 mentioning the state law claim in her screening order of the first amended complaint that had the  
 22 same language). However, because Garcia is a pro se litigant, I must construe his complaint  
 23 liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Garcia sufficiently asserted a claim  
 against LVMPD and Sheriff Lombardo for negligent hiring, training, and supervision under state  
 law. The LVMPD defendants' motion suggests they may have believed the screening order of  
 the first amended complaint limited Garcia's causes of action. ECF No. 90 ("In its [screening  
 order], this Court determined the following causes of action should proceed . . ."). But Garcia  
 was granted leave to amend his failure to train or supervise claim and he did so in his second  
 amended complaint. ECF Nos. 43 at 14; 44 at 9.

1 witness that Garcia fled eastbound from the scene. ECF No. 90-2 at 2. NHP troopers caught and  
 2 arrested Garcia. *Id.* NHP called for a medical unit after Garcia complained of leg pain. *Id.*

3 Shortly thereafter, Officer Prisbrey and his partner arrived at the scene and took over the  
 4 investigation. *Id.*; ECF No. 90-3 at 13-15. The medical unit also arrived and transported Garcia  
 5 to Sunrise Medical Hospital at approximately 6:30 p.m.<sup>4</sup> ECF No. 90-4 at 22. After concluding  
 6 the investigation around 10:00 p.m., Officer Prisbrey went to the hospital to check on Garcia's  
 7 status. ECF No. 90-3 at 17.

8 At the hospital, Dr. Rozendaal evaluated Garcia. ECF No. 92-2 at 2. After several x-  
 9 rays and CT scans, Dr. Rozendaal diagnosed Garcia with a heel fracture. ECF Nos. 90-5 at 6-  
 10 10; 44 at 4. Garcia received pain medication, a splint for his foot, and crutches. ECF Nos. 90-5  
 11 at 2-15; 92-2 at 6, 15-16. Dr. Rozendaal discharged Garcia from the hospital into LVMPD's  
 12 custody with verbal and written instructions to follow up with an orthopedic surgeon within  
 13 several days. ECF No. 92-2 at 9. Garcia alleges that Officer Prisbrey was present when he  
 14 received the instructions from Dr. Rozendaal. ECF No. 44 at 6. Officer Prisbrey testified that  
 15 he does not remember if he had any contact with Garcia or Dr. Rozendaal while he was at  
 16 Sunrise. ECF No. 90-3 at 17-18.

17 Garcia alleges that Officer Prisbrey interfered with his medical treatment by ordering Dr.  
 18 Rozendaal to discharge him instead of admitting him for orthopedic surgery. ECF No. 44 at 4.  
 19 Dr. Rozendaal testified that the presence of a police officer did not affect her medical decision-

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 22<sup>4</sup> Garcia alleges in his complaint that Officer Prisbrey transported him to Sunrise. ECF No. 44 at  
 23 4. But Officer Prisbrey testified that he did not transport Garcia because he was a motorcycle  
 officer and did not have a sidecar for prisoner transport. ECF No. 90-3 at 16-17. The NHP report  
 states that a medical unit transported Garcia to the hospital. ECF No. 90-2 at 3.

1 making regarding Garcia's discharge. ECF No. 92-3 at 12. She stated that Garcia's injury did  
 2 not require admission to the hospital. *Id.* at 14.

3 Garcia was then transported to Clark County Detention Center (CCDC).<sup>5</sup> ECF No. 44 at  
 4 5. Upon arriving at CCDC, Officer Prisbrey filled out Garcia's booking paperwork. ECF No.  
 5 90-3 at 24-25. This was the last interaction Officer Prisbrey had with Garcia. *Id.* at 26-27.  
 6 Garcia was admitted to the CCDC infirmary from January 3, 2016 to February 4, 2016. ECF No.  
 7 44 at 5. During this time, Garcia states that he was seen by John Doe, a NaphCare doctor, who  
 8 would not refer him for surgery because of the costs associated with the procedure. *Id.* Garcia  
 9 claims his untreated injury is now a permanent disability that causes him physical pain and  
 10 requires a lifetime of physical therapy, counseling, and medication. *Id.* at 6, 8.

11 Garcia claims that LVMPD and Sheriff Lombardo were deliberately indifferent to his  
 12 medical needs by entering into a contract with NaphCare because the company is the subject of  
 13 numerous lawsuits for deliberate indifference to detainees and prisoners' medical needs. *Id.* at 5.  
 14 He further claims that Sheriff Lombardo failed to create policies that ensure NaphCare provides  
 15 adequate and timely medical care and failed to intervene during the deficient care. *Id.* Garcia  
 16 also alleges that LVMPD and Sheriff Lombardo are liable for the constitutionally deficient  
 17 actions of Officer Prisbrey, John Doe, and Dr. Rozendaal. *Id.* at 9. Last, Garcia alleges Officer  
 18 Prisbrey was negligent and that he intentionally inflicted emotional distress. *Id.* at 6-8.

19 **II. ANALYSIS**

20 Summary judgment is appropriate when the pleadings and admissible evidence show  
 21 there is "no genuine issue as to any material fact" and that the movant is "entitled to judgment as  
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23 <sup>5</sup> Garcia alleges that Officer Prisbrey transported him to CCDC. ECF No. 44 at 5. Officer  
 Prisbrey testified that he did not transport Garcia to CCDC because he was a motorcycle officer  
 and thus not able to transport prisoners. ECF No. 90-4 at 20-21.

1 a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (citing Fed. R. Civ. P.  
 2 56(c)). When considering summary judgment motions, I must view all facts and draw all  
 3 inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach*  
 4 & Moore, Inc., 793 F.2d 1100, 1103 (9th Cir. 1986).

5 When the nonmoving party bears the burden of proving the claim, the moving party can  
 6 meet its burden in two ways: (1) by presenting evidence to negate an essential element of the  
 7 nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed to make a  
 8 sufficient showing establishing an essential element on which that party will bear the burden of  
 9 proof at trial. See *Celotex*, 477 U.S. at 323–24. If the moving party fails to meet its initial  
 10 burden, summary judgment must be denied, and the court need not consider the nonmoving  
 11 party’s evidence. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970). When a  
 12 motion for summary judgment is unopposed, the moving party must still satisfy its burden to  
 13 demonstrate the absence of any material fact. *Cristobal v. Siegel*, 26 F.3d 1488, 1494-95 (9th  
 14 Cir. 1994).

15 **A. 42 U.S.C. § 1983**

16 *1. Officer Prisbrey*

17 Garcia claims that Officer Prisbrey was deliberately indifferent to his medical needs by  
 18 instructing Dr. Rozendaal to discharge him, thereby interfering with his medical treatment.<sup>6</sup> To  
 19 state a claim under § 1983, “a plaintiff must show both (1) deprivation of a right secured by the  
 20 Constitution and laws of the United States, and (2) that the deprivation was committed by a  
 21 person acting under color of state law.” *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143,

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22  
 23 <sup>6</sup> Officer Prisbrey testified he does not remember speaking with Dr. Rozendaal. ECF No. 90-3  
 at 17-18. Viewing the evidence in the light most favorable to Garcia for purposes of this order, I  
 accept as true that Officer Prisbrey instructed Dr. Rozendaal to discharge Garcia.

1 1149 (9th Cir. 2011). Because Garcia was a pretrial detainee at the time of his injury, his § 1983  
 2 claim against Officer Prisbrey arises under the Fourteenth Amendment. *See Gordon v. Cnty. of*  
 3 *Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018). To establish a claim for deliberate indifference to  
 4 a pretrial detainee’s medical needs under the Fourteenth Amendment, the plaintiff must show:

5 (i) the defendant made an intentional decision with respect to the conditions under  
 6 which the plaintiff was confined; (ii) those conditions put the plaintiff at  
 7 substantial risk of suffering serious harm; (iii) the defendant did not take  
 8 reasonable available measures to abate that risk, even though a reasonable official  
 9 in the circumstances would have appreciated the high degree of risk involved—  
 10 making the consequences of the defendant’s conduct obvious; and (iv) by not  
 11 taking such measures, the defendant caused the plaintiff’s injuries.

12 *Id.* at 1125. Under the third element, the defendant’s conduct must be “objectively unreasonable,  
 13 a test that will necessarily turn on the facts and circumstances of each particular case.” *Id.*  
 14 (internal quotations and citation omitted).

15 Here, Officer Prisbrey has demonstrated that Garcia lacks sufficient evidence to show  
 16 that Officer Prisbrey instructed Dr. Rozendaal to discharge Garcia and thereby put him at  
 17 substantial risk of serious harm. Officer Prisbrey did not arrive at the hospital until after Garcia  
 18 received several imaging tests and treatment for his heel fracture, and Dr. Rozendaal provided  
 19 verbal and written discharge instructions. ECF Nos. 90-3 at 17; 90-5 at 4-6. Dr. Rozendaal  
 20 testified that she discharged Garcia because she felt it was appropriate and that she was not  
 21 influenced by a police officer. ECF No. 92-3 at 12, 14. Thus, the burden shifted to Garcia to  
 22 prove that a genuine factual dispute exists, but he did not present any evidence to do so. I  
 23 therefore grant summary judgment in favor of Officer Prisbrey.

24       2. *LVMPD*

25 Garcia claims that LVMPD was deliberately indifferent to his medical needs under  
 26 § 1983 by contracting with NaphCare despite knowing that the company provides  
 27

1 “constitutionally deficient care to detainees.” ECF No. 44 at 2, 5. He further claims that  
 2 LVMPD is municipally liable under § 1983 for negligently training Officer Prisbrey. *Id.* at 2.  
 3 LVMPD argues that it is entitled to summary judgment because Garcia “has not produced any  
 4 evidence that it had a policy, practice, custom, or scheme allowing its officers to deliberately  
 5 ignore suspects’ serious medical needs, that there was any failure to train, or that any final policy  
 6 making individual was personally involved in preventing Garcia’s medical treatment.” ECF No.  
 7 90 at 11.

8 Municipalities can be liable under § 1983 for infringement of constitutional rights in four  
 9 circumstances: “(1) an official policy; (2) a pervasive practice or custom; (3) a failure to train,  
 10 supervise, or discipline; or (4) a decision or act by a final policymaker.” *Horton by Horton v.*  
 11 *City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019) (citing *Monell v. Dep’t of Soc. Serv.*,  
 12 436 U.S. 658, 693-95 (1978)). A municipality may not “be sued under a *respondeat superior*  
 13 theory.” *Id.* at 603 (citing *Monell*, 436 U.S. at 691)).

14 To state a claim for municipal liability, there must be a “direct causal link” between the  
 15 municipal’s policy, practice, or custom and the alleged constitutional deprivation. *City of Canton*  
 16 *v. Harris*, 489 U.S. 378, 385 (1989); *Monell*, 436 U.S. at 691. “It is not sufficient for a plaintiff  
 17 to identify a custom or policy, attributable to the municipality, that caused his injury. A plaintiff  
 18 must also demonstrate that the custom or policy was adhered to with ‘deliberate indifference to  
 19 the constitutional rights’” of the plaintiff. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1076  
 20 (9th Cir. 2016) (en banc) (quoting *City of Canton*, 489 U.S. at 392).

21 The failure to train or supervise government employees may serve as a basis for liability  
 22 when the failure amounts to deliberate indifference to the rights of persons with whom the  
 23 employees come into contact. *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1186 (9th Cir. 2006).

1 In § 1983 lawsuits, “supervisors can be held liable for: 1) their own culpable action or inaction in  
 2 the training, supervision, or control of subordinates; 2) their acquiescence in the complained-of  
 3 constitutional deprivation; and 3) conduct that showed a reckless or callous indifference to the  
 4 rights of others.” *Cunningham v. Gates*, 229 F.3d 1271, 1292 (9th Cir. 2000).

5 LVMPD argues that Garcia lacks evidence to support his § 1983 claims. There is no  
 6 evidence that LVMPD had a deficient training program or that it had a policy, practice, or  
 7 custom that caused Officer Prisbrey to interfere with Garcia’s medical treatment. *See generally*  
 8 ECF No. 44. There is no evidence that the final policy maker’s decision to contract with  
 9 NaphCare despite knowing that the company is the subject of deliberate indifference lawsuits  
 10 and investigations was done with deliberate indifference to Garcia’s medical needs. The burden  
 11 therefore shifted to Garcia to show that a genuine dispute exists for trial, but he failed to point to  
 12 any evidence to supports his claims. Accordingly, I grant summary judgment on Garcia’s § 1983  
 13 claims against LVMPD.

14       3. *Sheriff Lombardo*

15 Garcia claims that Sheriff Lombardo was deliberately indifferent to his medical needs by  
 16 contracting with NaphCare despite knowing that the company provides “constitutionally  
 17 deficient care to detainees.” ECF No. 44 at 5. He further claims that Sheriff Lombardo, as chief  
 18 policy maker, failed to create policies that ensure adequate and timely medical care is  
 19 administered to detainees at CCDC. *Id.* at 2. Sheriff Lombardo argues he is entitled to summary  
 20 judgment because Garcia did not offer evidence that he personally participated in the alleged  
 21 constitutional violations. ECF No. 90 at 11-12.

22       A defendant may be liable as a supervisor under § 1983 if (1) he is personally involved in  
 23 the constitutional deprivation, or (2) there is a “sufficient causal connection between the

1 supervisor's wrongful conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202,  
2 1207 (9th Cir. 2011) (internal quotations and citation omitted). A causal connection can be  
3 established "by setting in motion a series of acts by others" or "by knowingly refus[ing] to  
4 terminate a series of acts by others, which the supervisor knew or reasonably should have known  
5 would cause others to inflict a constitutional injury." *Id.* at 1207-08 (alterations in original)  
6 (internal quotations and citation omitted).

7 Sheriff Lombardo has shown that Garcia lacks evidence that he was personally involved  
8 in or caused Garcia's alleged constitutional violations. There is no evidence that Sheriff  
9 Lombardo failed to create policies that ensure adequate and timely medical care is administered  
10 to CCDC detainees, failed to intervene in Garcia's medical treatment, or participated in forming  
11 the contract with NaphCare. The burden therefore shifted to Garcia, who did not provide  
12 evidence showing a genuine factual dispute. Accordingly, I grant summary judgment on the  
13 § 1983 claims against Sheriff Lombardo.

14 **B. Negligence**

15 Garcia claims that Officer Prisbrey had a duty not to interfere with his medical treatment  
16 and breached that duty when he ordered Dr. Rozendaal to discharge him instead of admitting  
17 him for surgery. Garcia asserts that Officer Prisbrey's breach of that duty is the direct,  
18 contributing, or proximate cause of his pain and suffering and permanent injury. Officer  
19 Prisbrey moves for summary judgment because Garcia failed to allege any facts supporting his  
20 negligence claim beyond conclusory allegations.

21 To state a claim for negligence in Nevada, a plaintiff must allege four elements: "(1) the  
22 defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach  
23

1 was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages." *Sadler v.*  
 2 *PacifiCare of Nev.*, 340 P.3d 1264, 1267 (Nev. 2014) (citation omitted).

3 Officer Prisbrey has shown that Garcia lacks evidence to support his negligence claim.  
 4 The record is devoid of evidence that shows Officer Prisbrey's alleged instructions to Dr.  
 5 Rozendaal were the legal cause of Garcia's injuries. In fact, Dr. Rozendaal testified that her  
 6 decision to discharge Garcia was not influenced by Officer Prisbrey. ECF No. 92-3 at 12.  
 7 Because Garcia failed to show a genuine factual dispute exists, I grant summary judgment on his  
 8 negligence claim.

9 **C. Intentional Infliction of Emotional Distress**

10 Garcia claims that Officer Prisbrey engaged in extreme and outrageous conduct that  
 11 caused him substantial, debilitating physiological and psychological distress when he instructed  
 12 Dr. Rozendaal to discharge him from the hospital. ECF No. 44 at 7-8. Officer Prisbrey argues  
 13 there is no evidence indicating that his actions constituted extreme and outrageous conduct.

14 Under Nevada law, the tort of IIED has three elements: "(1) extreme and outrageous  
 15 conduct with either the intention of, or reckless disregard for, causing emotional distress;  
 16 (2) severe or extreme emotional distress suffered by the plaintiff; and (3) actual or proximate  
 17 causation." *Jordan v. State ex. rel. Dep't of Motor Vehicles & Pub. Safety*, 110 P.3d 30, 52 (Nev.  
 18 2005) (en banc), abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 181  
 19 P.3d 670 (Nev. 2008). To be extreme and outrageous, conduct must be "outside all possible  
 20 bounds of decency" and be considered "utterly intolerable in a civilized community." *Maduike v.*  
 21 *Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998) (internal quotations and citation omitted).

22 Officer Prisbrey has demonstrated that Garcia lacks evidence that Officer Prisbrey's  
 23 conduct was extreme or outrageous. Even viewing the evidence in light most favorable to

1 Garcia, Officer Prisbrey at most told Dr. Rozendaal to discharge Garcia and she agreed. There  
2 is no evidence that this conduct was outside all possible bounds of decency or considered utterly  
3 intolerable in our society. Accordingly, I grant summary judgment on Garcia's IIED claim.

4 **III. CONCLUSION**

5 I THEREFORE ORDER that the LVMPD defendants' motion for summary judgment  
6 **(ECF No. 90) is GRANTED.**

7 I FURTHER ORDER that LVMPD and Sheriff Lombardo may file either a new motion  
8 for summary judgment on the remaining claim or a proposed joint pretrial order by April 9,  
9 2021.

10 DATED this 11th day of March, 2021.



11  
12 ANDREW P. GORDON  
13 UNITED STATES DISTRICT JUDGE  
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